IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.504 OF 2004.

The State of Maharashtra : Appellants.

versus

Posha Barkya Patil & Anr. : Respondents.

Mr.S.N.Gawade, AGP, for the State.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 24th August 2005.

ORAL ORDER

1. Heard the learned AGP for the State. Nobody is present for the respondents though they are served and their advocate has filed vakalatnama and his name is shown on board.

2. One legal question was raised by the

learned AGP. This present appeal is filed against the Award under Section 18 of the Land Acquisition Act decided by the Civil Judge, Sr.Division, Panvel on 15.12.2001. Though this is a reference to an Award under Section 18, it is arising out of the following background.

3. Notice under Section 4 was issued on 3.2.1970. Award under Section 11 came to be passed on 7.1.1985. That award was not challenged by the claimants under section 18. But they chose to apply the Collector under Section 28-A of the Land Acquisition Act and such an application came to be made on 8.7.91. The collector decided it on 11.5.1994 and, thereafter, as provided by Section 28A(3), the claimants filed a reference against the award of the collector as given under Section 28A(2). That was presented on 23.12.1994 to the Civil Court and, therefore, the learned AGP contended that this was beyond time, but that aspect of the matter was not properly considered by the reference Court and wrongly enhanced the compensation.

4. Since Section 28A is important in this

matter I am producing the same as under :-

> **"Section 28A. Re-determination of the amount of compensation on the basis of the award of the Court :-** (1) Wherein an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court;
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> Provided that in computing the period of three months within which an application

to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18."

5. Section 11 enjoins upon Collector to make

an inquiry into the measurement, value and claim of the claimant in respect of acquire land and, he has to make an award under that section. Right is given to the aggrieved person to make a reference to the Court under Section 18. This right to challenge the award under Section 11 is an independent right and it has no concern with the right given under Section 28A.

6. Section 28A is an independent section. It gives right to the persons receiving compensation to invoke that section and apply to the collector for enhancement. Even though those persons make an application under section 18 against the original award, the time limit prescribed under section 28A is three months from the original award. But Section 28A(3) lays down that the provisions of sections 18 to 28 shall apply to such reference under section 18. Therefore, in any case the aggrieved party has to challenge the award of the collector within six months and word "award" is also used in subsection (2) for the decision of the Collector and the application under section 28A. Therefore, when subsection 3 has laid down specific time, it is necessary and obligatory

upon the aggrieved party to move the court within that period i.e. within six months. In para 2 of the Impugned judgment the Reference Court has stated, "the land bearing..... are owned by the claimant Nos. 1 and 2. The said lands are acquired by the Government for "NEW BOMBAY PROJECT" Accordingly the award was passed. The claimants had preferred an application under Section 28-A of the Land Acquisition Act, but as the award passed by the S.L.A.O was for meagre and insufficient amount, they presented reference under section 18 before the Civil Court."

7. It will be clear from the aforesaid observations and findings that what was pending before the Court was consequent upon invoking section 28 by the claimants. Therefore, provisions of Section 28A(3) ought to have been considered by the reference court. From the dates and particulars given by the learned AGP it is clear that the reference before the reference court was time barred. In view of this fact, I pass the following order :-

:ORDER:

The appeal is allowed. The impugned order under Reference dated 15.12.2001 is set aside and quashed.

If the State has deposited the amount as per this impugned order and if the same has not been paid to the respondents/claimants, the same shall be returned to the State. If it has been paid to the respondents/claimants, they will return it to the State within eight weeks from today with interest at the rate of 9% p.a.

No order as to costs.

[D.G.DESHPANDE,J]